IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRUCE WALL, Plaintiff, v. AMERICOLD CORP., Defendant.	Civil Action No. 97-1823

Gawthrop, J. July , 1997

M E M O R A N D U M

Before the court in this privacy rights case are Defendant's Motion to Dismiss or, in the Alternative, for Summary Judgment or for More Definite Statement, and Plaintiff's Cross-Motion to File an Amended Complaint. Defendant argues that section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a), preempts Plaintiff's claims that his employer violated state law by requiring him to submit to an urinalysis and by allowing police to search his locker at work. In the alternative, Defendant requests that the court order Plaintiff to provide a more definite statement of which civil rights it allegedly violated. Plaintiff counters that his civil rights claims are under 42 U.S.C. § 1983, which section 301 cannot preempt, and moves for leave to amend his complaint. Upon the following reasoning, I shall grant Defendant's Motion to Dismiss Plaintiff's state law claim, and deny Plaintiff's Motion for Leave to File an Amended Complaint.

I. Background

In 1996, Defendant Americold Corporation employed Plaintiff Bruce Wall at its Fogelsville, Pennsylvania plant. On March 20, 1996, Americold allowed Pennsylvania State Police officers to search Mr. Wall's locker at the plant. They found no illegal substances. By not objecting to this search, Mr. Wall maintains that Americold illegally waived his constitutional rights. Four days later, on March 24, 1996, the plant's personnel manager, Bruce Haas, began demanding that Mr. Wall undergo drug testing. When Mr. Wall refused, Mr. Haas searched his locker, but found nothing illegal. On March 26, 1996, Mr. Haas, allegedly without reason or probable cause, forced Mr. Wall to undergo a urinalysis. The testing showed no illegal substances.

Mr. Wall implicitly bases his claim that Defendant acted illegally upon Americold's Drug and Alcohol Policy. This policy states that Americold will ask an employee to submit to a urinalysis if it has "REASONABLE SUSPICION that an employee is under the influence of alcohol or drugs during work time." Americold contends that it has authority to enact such a policy by the terms of a collective bargaining agreement between Americold Corporation-Fogelsville and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Local No. 677. This agreement contains a "Management Rights" clause, Article 32, which provides, in relevant part: "Nothing in this Agreement shall limit the Company

in its functions of management, such as the rights to . . . direct the workforce . . . to maintain discipline and efficiency, to discipline, suspend or discharge for just cause . . . and to establish and change rules with respect to the conduct and discipline of employees. . . ." The Agreement also provides that "[t]he Company shall continue to make reasonable provisions for the safety and health of employees during the hours of their employment", Article 21, and that "[d]ischarge may be imposed at the discretion of the Company for . . . using or being under the influence of, or in possession of, illegal drugs during working hours . . . ." See Article 19.

Mr. Wall filed this action in state court on February 10, 1997, claiming that Defendant had invaded his privacy and violated his civil rights. Americold then removed the suit to this court, alleging federal question jurisdiction under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a). This court also has diversity jurisdiction because Americold is an Ohio corporation, while Plaintiff is a citizen of Pennsylvania.

II. Standard of Review

A court should dismiss a complaint pursuant to Fed. R. Civ. P. 12(b)(6) only if it finds that the plaintiff cannot prove any set of facts, consistent with the complaint, which would entitle him to relief. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). In making this determination, the court must accept

as true all allegations made in the complaint, and all reasonable inferences that may be drawn from those allegations. Rocks v. Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989). The court must view these facts and inferences in the light most favorable to the plaintiff. Id. The court may draw these facts and inferences from the complaint, exhibits attached to the complaint, matters of public record, and undisputedly authentic documents if the plaintiff's claims are based upon those documents. Pension Benefit Guar. Corp. v. White Consol. Indus., 998 F.2d 1192, 1196 (3d Cir. 1993), cert. denied, 510 U.S. 1042 (1994).

III. Discussion

A. LMRA Preemption

Defendant first argues that section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a), preempts Plaintiff's invasion of privacy claim under state law. Plaintiff counters that his intended claims are solely under 42 U.S.C. § 1983, and thus are not state claims which could be preempted by LMRA. Both Plaintiff's original and proposed amended Complaints, however, leave open the possibility of state law claims. The original Complaint speaks generally of the invasion of Plaintiff's privacy and the violation of his civil rights. Such allegations could constitute claims under either state or federal law. Further, Plaintiff's Proposed Amended Complaint states that this court would have jurisdiction under § 1983 and "the

principles of ancillary and pendant jurisdiction," thus implying the existence of state law claims. I thus find it necessary to address the question of whether Plaintiff has any viable state law claims.

As a general rule, when a state law claim is "inextricably intertwined" or "substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract," the court either must treat that claim as one under LMRA § 301, or it must dismiss the claim as preempted by LMRA. See Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 213, 220 (1985). In other words, the claim cannot be maintained under state law if it requires interpretation of a collective bargaining agreement ("CBA"). See Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 413 (1988). To determine whether resolution of a state-law claim depends upon a CBA's meaning, a court must analyze the elements of the state law claim to see if they would require construing the CBA. See id. at 406-07 (analyzing the elements of the Illinois tort for retaliatory discharge). Here, the state law claim would be for tortious invasion of privacy. The elements for this tort include: "(1) physical intrusion into a place where the plaintiff has secluded himself . . . ; (2) use of the defendant's senses to oversee or overhear the plaintiff's private affairs; or (3) some other form of investigation or examination into plaintiff's private concerns . . . ." Borse v. Piece Goods Shop, Inc., 963 F.2d 611, 621 (3d Cir. 1992). Further, a court must balance "the employee's

privacy interest against the employer's interest in maintaining a drug-free workplace in order to determine whether a reasonable person would find the employer's program highly offensive." Id. at 625.

The balancing test for an invasion of privacy claim requires CBA interpretation: "the collective bargaining agreement classically provides the context in which an employee's bona fide expectations of privacy and personal security in the workplace are arrayed against the employer's right to exercise supervision and control of a particular kind." Jackson v. Liquid Carbonic Corp., 863 F.2d 111, 118 (1st Cir. 1988), cert. denied, 490 U.S. 1107 (1989). In Jackson, the First Circuit examined a Massachusetts' right-to-privacy statute which, like the Pennsylvania tort, requires a balancing of employee and employer interests. Id. at 116. As here, the CBA in Jackson did not address the issue of drug testing. Rather, the employer had enacted a drug testing program pursuant to the CBA's management rights clause. See id. at 112-13. Further, the CBA provision allowing discharge for use or possession of drugs during working hours implies that this area was subject to collective bargaining. See Laws v. Calmat, 852 F.2d 430, 433 (9th Cir. 1988) ("A drug and alcohol testing program, upon which all employees' continued employment depends, is a working condition whether or not it is specifically discussed in the CBA."). Analysis of Plaintiff's invasion of privacy claim is inextricably intertwined with interpretation of a CBA which recognizes

Americold's right to manage the plant, direct the workforce, implement safety rules, and discharge employees for use or possession of illegal drugs. Because any state law claim for invasion of privacy would require interpretation of Americold's CBA, that claim cannot be maintained under state law.[1]

Nor can Plaintiff transform his state law claim into one under LMRA § 301. When a claim requires CBA interpretation, that claim must first be addressed through the CBA's prescribed grievance procedures. An employee's failure to exhaust collective bargaining grievance procedures precludes a federal court from hearing the claim. Angst v. Mack Trucks, Inc., 969 F.2d 1530, 1537 (3d Cir. 1992). See also Allis-Chalmers Corp., 471 U.S. at 220 (permitting "an individual to sidestep available grievance procedures would cause arbitration to lose most of its effectiveness, . . . as well as eviscerate a central tenet of federal labor-contract law . . . that it is the arbitrator, not the court, who has the responsibility to interpret the labor contract in the first instance."). Because Plaintiff has not alleged any use of the grievance and arbitration procedure outlined in Americold's CBA, he cannot bring this claim under

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1. This is not to say that a drug testing program could never violate an employee's privacy rights. Urinalysis testing can be "invidiously invasive" of an employee's privacy. See, e.g., United Steelworkers of America v. USS, A Division of USX Corp., No. 89-1546, 1989 WL 30697 at * 2 (E.D. Pa. March 29, 1989). See also Borse, 963 F.2d at 621. But while "drug testing obviously implicates important personal rights," it appears that the right to be free of drug testing can be negotiated away. Laws, 852 F.2d at 433 n. 4.

LMRA § 301. Thus, I must dismiss any state law invasion of privacy claim as preempted by LMRA § 301.

The next question is whether Plaintiff can state a federal constitutional claim for invasion of privacy under 42 U.S.C. § 1983. To state a claim under § 1983, Plaintiff must allege that (1) the defendant performed an act that deprived him of one or more of his constitutional rights, and that (2) the defendant was acting under color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988). According to his Proposed Amended Complaint, Plaintiff would allege violations of the Fourth and Fourteenth Amendments, thus satisfying the first requirement. By alleging a conspiracy between his employer and state police, Plaintiff also might be able to satisfy the second requirement. See Adickes v. S.H. Kress & Co., 398 U.S. 144, 150-52 (1970); Melo v. Hafer, 912 F.2d 628, 638 (3d Cir. 1990), aff'd, 502 U.S. 21 (1991) ("private parties acting in a conspiracy with a state official to deprive others of constitutional rights are also acting `under color' of state law."). But even should Plaintiff establish a constitutional violation by a party acting under color of state law, he cannot maintain his claim under § 1983. The Third Circuit has held that "even where a drug testing policy has been held to be constitutionally infirm, a public employee may not pursue a civil rights suit based upon that infirmity where his union and his employer agree to operate under that policy." Dykes v. Southeastern Pa. Transp. Auth., 68 F.3d 1564, 1570 (3d Cir. 1995)

(citing Bolden v. SEPTA, 953 F.2d 807 (3d Cir. 1991)). If a public employee cannot maintain such a suit, and a private employee could not maintain such a suit absent joint action, there is no reason to believe that the Third Circuit would permit such a suit to proceed simply because the plaintiff alleges conspiracy with a state actor. Because LMRA also would preempt Plaintiff's § 1983 claim, I shall deny his Motion for Leave to Amend his Complaint to plead this claim.

An order follows.

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O R D E R

AND NOW, this day of July, 1997, upon the reasoning in the attached Memorandum:

1. Defendant's Motion to Dismiss, or, in the Alternative, for Summary Judgment is GRANTED. Plaintiff's Complaint is DISMISSED.

2. Plaintiff's Cross-Motion for Leave to File an Amended Complaint is DENIED.

BY THE COURT

Robert S. Gawthrop, III, J.